

**United States Court of Appeals
For the Ninth Circuit**

SANTOS CUADRA, *Appellant*,

vs.

QUEEN FISHERIES, INC., a corporation, and E. H.
BENDIKSEN, doing business as E. H. BENDIKSEN Co.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

BRIEF OF APPELLEES

SWEET, WOLF & MERRICK,
H. J. MERRICK,
Attorneys for Appellees.

1015 Joseph Vance Building,
Seattle 1, Washington.

THE ARGUS PRESS, SEATTLE

FILED

APR 10 1956

PAUL P. O'BRIEN, CLERK

United States Court of Appeals For the Ninth Circuit

SANTOS CUADRA, *Appellant*,

vs.

QUEEN FISHERIES, INC., a corporation, and E. H.
BENDIKSEN, doing business as E. H. BENDIKSEN Co.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

BRIEF OF APPELLEES

SWEET, WOLF & MERRICK,
H. J. MERRICK,
Attorneys for Appellees.

1015 Joseph Vance Building,
Seattle 1, Washington.

INDEX

	<i>Page</i>
Jurisdiction	1
Counter Statement of the Case.....	1
Argument in Support of Judgment.....	3
Conclusion	10

TABLE OF CASES

<i>Alaska Industrial Board v. Alaska Packers Association</i> , 186 F.(2d) 1015.....	9
<i>Alaska Packers Association v. Marshall</i> , 95 F.(2d) 279	9
<i>Grant-Smith-Porter Company v. Rohde</i> , 257 U.S. 469	6
<i>Miller's Indemnity Underwriters v. Brand</i> , 70 U.S. 59	6
<i>Puget Sound Freight Lines, et al. v. Marshall</i> , 125 F.(2d) 876	10
<i>Southern Pacific v. Jensen</i> , 244 U.S. 205.....	6
<i>Sultan Railway & Timber Co. v. Dept. of Labor and Industries</i> , 141 Wash. 172.....	7

STATUTES

Alaska Workmen's Compensation Act, Alaska Code of 1949, Section 43-3-1.....	4
---	---

United States Court of Appeals
For the Ninth Circuit

SANTOS CUADRA,

Appellant,

vs.

QUEEN FISHERIES, INC., a corporation, and

E. H. BENDIKSEN, doing business as E.

H. BENDIKSEN Co.,

Appellees.

No. 14969

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

BRIEF OF APPELLEES

JURISDICTION

The appellant contends that jurisdiction is granted by the provisions of Title 46 U.S.C.A. Sec. 688. This the appellees deny.

COUNTER-STATEMENT OF THE CASE

The appellees herein, Queen Fisheries, Inc., and E. H. Bendiksen Co., are engaged in the business of canning salmon, said canning operations being conducted at Bristol Bay, Territory of Alaska.

The canning equipment or cannery line is located aboard their vessel, the ALASKA QUEEN, a vessel of some 297 tons.

Each and every season the ALASKA QUEEN is sailed from the Seattle area to Bristol Bay by its regular

crew. The crew of said vessel consists of a skipper, the mate, two engineers, three deckhands and a cook (R. 158). The navigation of said vessel to and from the cannery operation at Bristol Bay is under the supervision and control of the captain of the vessel (R. 106). After said vessel arrives in the Bristol Bay area, it is moored alongside a dock adjacent to the appellees' warehouse, and said vessel is anchored fore and aft.

After the arrival of the vessel in the Bristol Bay area, the canning operation is under the supervision and control of the appellee, E. H. Bendiksen. A separate crew, consisting of natives and non-residents, operates the canning operation as a separate crew (R. 158). The appellant is a member of this group.

The appellant herein, Santos Cuadra, was employed by the appellee, Bendiksen, as a fish butcher and part of the Filipino canning crew. After the vessel arrives in the Bristol Bay area, the non-resident Filipino cannery workers are transported by air from Seattle to the cannery. At the conclusion of the canning season, the Filipino cannery crew are returned to Seattle by air (R. 165). The regular crew of the vessel returns the ship to the Seattle area after the conclusion of the canning season (R. 156).

The crew of the vessel is paid by the month, and also they are paid based upon a percentage of the pack for the season (R. 159-160). The non-resident cannery workers are paid pursuant to the cannery workers' union contract and on a seasonal guarantee basis (R. 159).

The salmon canning operation is no different than any other canning operation in the Bristol Bay area,

with the exception that the canning equipment itself is located on a vessel that floats (R. 41, 165).

In order to operate the cannery, the vessel must tie up alongside the beach, inasmuch as said cannery requires a supply of fresh water from the beach to operate the boilers and conduct the canning operation. In addition, warehousing facilities on the beach are necessary for the storing and casing of the canned salmon (R. 153-154-161-162). In effect, said floating cannery must become a stationary adjunct to the shore in order to operate as a cannery.

The cannery workers have a different method of pay from the regular members of the crew (R. 159-160). They have separate supervision from the members of the crew (R. 160). There are separate quarters aboard the vessel and on shore for the Filipino cannery workers (R. 160); they are hired differently and have different wage contracts from the regular crew members of the vessel. There is no interchange among the cannery crew and the crew that operates the vessel (R. 164), and the Filipino cannery workers are employed merely for the canning operations at Bristol Bay, which generally last approximately one month (R. 158).

ARGUMENT IN SUPPORT OF JUDGMENT

The specification of assigned errors is directed solely to the conclusion of law, as to whether or not these Filipino cannery workers, and the appellant in particular, are members of the crew within the meaning of the Jones Act, or whether or not they are industrial workers whose claims come within the jurisdiction of th

Alaska Workmen's Compensation Act, Section 43-3-1 of the Alaska Code of 1949.

It is the contention of these appellees that the operation of the appellees presents a function which is actually dual in nature.

One operation consists in sailing the vessel, ALASKA QUEEN to the Bristol Bay area for canning operations each and every summer, and the return of said vessel to its home port of Seattle at the conclusion of the season.

The second part of the operations, *viz.*, the industrial operation of canning salmon, begins only when the voyage to the Bristol Bay area ends, and when the vessel comes to rest permanently attached to the shore area adjacent to the warehouse in Bristol Bay. Then and then only does the appellant herein involved begin to perform his labors on behalf of the appellees. This labor, which is performed while said vessel is at rest and permanently affixed to the shore, is essentially local in character and has no relation whatsoever to the navigation of said vessel. The work of the appellant herein is confined primarily to working as a fish butcher in the cannery operations and the maintenance of the cannery deck for said operations. The vessel itself must tie up to the shore in order to have available the water for washing the fish and operating the boilers (R. 162). Also it cannot operate without the warehousing facilities on the beach, inasmuch as warehousing facilities on said vessel are not available for the purpose of casing and storing the salmon as it is canned (R. 162).

The loading of the salmon from the warehouse into barges is typical of any other cannery operation in the

Alaska area (R. 127-128). The fact that the Filipino cannery workers eat aboard the vessel is not material. Due to the nature of the operation, there are no facilities to eat ashore, so therefore food must be supplied on the vessel (R. 160). The fact that the appellant lived aboard is not conclusive either, inasmuch as part of the cannery crew live aboard and the others live ashore where space is available (R. 103). At the time of the alleged injury the appellant was working in a barge with other Filipinos, and also with a number of the native Alaskan Indians who were employed by the appellees to assist in the canning operations. The natives also work with the Filipino workers on the cannery deck and also in the warehouse (R. 40, 41, 97).

It is the position of the appellees herein that there is no question but that the loading of the salmon in the barge is merely an incident of the canning process itself, and certainly there is nothing more local to Alaska than the canned salmon industry.

It is the contention of these appellees that at the time of the alleged injury, the appellant herein was engaged in an enterprise which is a purely local matter, regulation of which by the Territory of Alaska would work no material prejudice to the General Maritime Law, and is not concerned with commerce or navigation, and therefore the Alaska Compensation Act can undoubtedly provide compensation.

It is well settled that if an injury occurs in navigable waters in the performance of a maritime contract, the case falls within the exclusive jurisdiction of Admiralty, unless (a) *the contract is of mere local concern*; (b)

its performance has no direct effect upon navigation or commerce, and (c) the application of the local statute would not necessarily work material prejudice to any characteristic feature of the General Maritime Law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations.

This is the doctrine laid down in *Southern Pacific v. Jensen*, 244 U.S. 205. This doctrine has been reinforced and expanded in *Miller's Indemnity Underwriters v. Braud*, 70 U.S. 59. In that particular case a diver working off a floating barge had submerged himself in navigable waters "for the purpose of sawing off of timbers of an abandoned set of ways once used for launching ships and which had become an obstruction to navigation" (p. 63).

In that case the locality was Maritime, the diver's employment in working beneath the surface of navigable waters was Maritime, a maritime tort was committed. Nevertheless, it was held that the nature of the enterprise in which he was engaged was a matter of mere local concern because he was engaged in dismantling a fixed local structure which, incidentally, had a closer relation to navigation and maritime commerce than the canned salmon industry. There is discussed in the *Braud* case the previous Supreme Court case of *Grant Smith-Porter Company v. Rohde*, 257 U.S. 469, in which it had been held that a carpenter injured while at work upon an uncompleted vessel lying in navigable waters within the State of Oregon was engaged in a non-maritime contract, having no direct relation to navigation or commerce, and therefore the exclusive remedy prescribed by the Oregon Workmen's Compens-

sation Act precluded him from recovering damages for his injuries except under said Act.

In *Sultan Railway & Timber Co. v. Dept. of Labor and Industries*, 277 U.S. 135 (affirming 141 Wash. 172), there was involved the validity of an order requiring payments into the State Workmen's Compensation fund of assessments based on the wages of certain employees engaged in log booming work on the Snohomish River. It was there stated:

“The plaintiff in one suit is conducting logging operations a part of which consists in putting saw logs into booms after they have been thrown into a navigable river, so that they conveniently may be towed elsewhere for sale. The men are employed in the booming work. The plaintiff in the other suit conducts a sawmill on the bank of a navigable river. Logs are towed in booms to a point adjacent to the mill and then anchored. The booms afterward are taken apart and the logs are guided to a conveyor extending into the river and then drawn into the mill for sawing. The men are employed in taking apart the booms and guiding the logs to the conveyor. In both instances the place of work is on navigable water—in one it is done before actual transportation begins, and in the other after the transportation is completed.

“It is settled by our decisions that where the employment, although maritime in character, pertains to local matters having only an incidental relation to navigation and commerce, the rights, obligations and liabilities of the parties as between themselves may be regulated by local rules which do not work material prejudice to the characteristic features of the General Maritime Law or interfere with its uniformity. Citing *Grant Smith-Porter Co. v.*

Rohde, supra; Miller's Indemnity Underwriters v. Braud, supra, and Alaska Packers Association v. Industrial Accident Commission, 276 U.S. 467."

In other words, since the Alaska Compensation Act applies to all employment which is within the legislative jurisdiction of said territory, said territorial law includes the entire field not excluded from state or territorial jurisdiction by the "Jensen line of decision." Consequently, the sole test in this case is whether the facts fall under the "Jensen line of decision."

The "Jensen line of decision" lays down the line of demarcation between exclusive federal maritime jurisdiction and state jurisdiction, definitely leaving within the field of state or territorial legislative jurisdiction all maritime matters of "merely local concern" which do not interfere with the "proper harmony and uniformity of the General Maritime Law." As pointed out in the cases discussed above, an employee engaged in an enterprise of dismantling booms or working on submerged sets of ways is, even though in the water or upon a barge on the water, engaged in a purely local enterprise, a "merely local matter" to which the territorial law applies.

In the instant case, the appellees herein are, of course, engaged in the business of canning salmon. That is the only purpose for which the vessel is moved from Seattle to the Bristol Bay area. The moving of the canned salmon from the warehouse on the beach into a barge alongside the ALASKA QUEEN for transportation into the stream, although a contemplated movement on navigable waters of Bristol Bay, is not engaging in commerce in such a sense so as to effect the "proper

harmony or uniformity of the General Maritime Law in its international and interstate relations." The use of the barge is purely incidental and part of the canning operation.

Also we feel that this is the theory announced by this court in *Alaska Packers Association v. Marshall*, found at 95 F.(2d) 279, 281, where this court says:

"When the details of the contract of employment are considered, the local character of this gathering of the cannery's raw materials is clearly seen as a mere incident to the canning process."

Also, the case of *Alaska Industrial Board v. Alaska Packers Association*, 186 F.(2d) 1015, is clearly distinguishable. In that particular case the claimant's injuries were from a purely maritime cause, the result of a straining of his back in carrying a sack of coal from the ship's bow to the ship's galley. "The towboat had been and was to be used by the packers in towing fishing boats and their fishermen from the packers' stationary receiving station at Nakanek on Kvichak, an inlet of Bristol Bay, Alaska, some twenty miles or more out to the fishing grounds in Bristol Bay, and later at the end of the fishing day returning to tow the boat, the fishermen and their catch back to the receiving station."

In the instant case, Cuadra was not employed by appellees for the purpose of *operating the vessel* in navigable waters. He was employed solely to assist in the shore based operation of canning the salmon. The record is clear that the appellant herein, who is 53 years of age, during all of his working career in this country has been employed as a cannery worker, and that was the only purpose of his hiring out with the appellees

herein. The record is also abundantly clear that his duties were no different from any other regularly employed cannery worker in the Bristol Bay area, with the exception of the fact that the cannery itself floats. Compare this court's decision in *Puget Sound Freight Lines, et al., v. Marshall*, 125 F.(2d) 876.

For that reason the appellees herein provided coverage for this cannery worker under the Alaska Compensation Act, and after the reported injury, said claim was turned over to the Alaska Industrial Board, and said man was furnished medical, hospitalization and compensation (R. 165-166-167), said appellant being merely a cannery worker engaged in duties that are common to all employees engaged in such work in the Territory of Alaska.

CONCLUSION

The appellees respectfully submit that the judgment of the trial court should be affirmed, on the grounds and for the reason that the appellant is not a member of the crew within the meaning of the Jones Act.

SWEET, WOLF & MERRICK,
H. J. MERRICK,
Attorneys for Appellees.